No. 827 LIBRARY SUPREME COURT. U. S.

Office Supreme Court, U.S.
FILED
MAR 3 1958
JOHN T. FEY, Clerk

JOINT APPENDIX

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13968

GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL 270 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO, ET AL.,

Petitioners

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petition to Review and Set Aside and on Petition for Enforcement of an Order of the National Labor Relations Board

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IN THE

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FOR THE DISTRICT OF COLUMBIA CIRCUIT

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GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL 270 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO, ET AL.,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

DESIGNATION OF RECORD TO BE PRINTED

To the Honorable, the Judges of the United States Court of Appeals for the District of Columbia Circuit:

The above-named parties hereby jointly designate the following parts of the record to be printed as a joint appendix in accordance with the rules of this Court:

1. Relevant docket entries

2. Prehearing conference stipulation, and approval of this Court dated September 6, 1957.

3. Complaint dated August 23, 1956.

4. Answer dated August 30, 1956.

5. The Board's decision and order, dated March 29, 1957, and attached intermediate report.

6. The following portion of the transcript of testimony: From p. 245, l. 25, through p. 255, l. 20.

HERBERT S. THATCHER,
Counsel for Petitioner.

STEPHEN LEONARD,
Associate General Counsel,
National Labor Relations Board,
Counsel for Respondent.

September 24, 1957.

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL 270 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO, et al.

15-00-50

8. 1.56	Charge filed
8.23.56	Complaint and noice of hearing issued
• 8.29.56	Petitioners' answer to complaint sworn to
9.11.56	Hearing opened
9.12.56	Hearing closed
11. 6.56	Trial Examiner's Intermediate Report and Recommended order issued
11. 6.56	Order transferring case to the Board
11.26.56	Petitioners' exceptions received
3.29.57	Decision and Order issued

• Respondent before the Board.

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13968

GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL 270 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO, ET AL.,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PREHEARING CONFERENCE STIPULATION

Pursuant to Rule 38(k) of the Rules of this Court, the parties, subject to the approval of the Court, stipulate and agree as follows with respect to the issues, the date for the filing of the briefs and joint appendix, and the contents of the joint appendix:

I. Statement of the Issue

Whether the Board properly concluded that, in the circumstances of this case, the union's picketing at the New Orleans Port of Embarkation violated Section 8(b)(4)(A) and (B) of the National Labor Relations Act, as amended.

II. The Contents of the Joint Appendix

The portions of the record to be printed as a joint appendix shall consist of:

a. Relevant docket entries.

b. Complaint dated August 23, 1956.

c. Answer dated August 30, 1956.

d. Decision and Order of the Board, dated March 29, 1957, and attached intermediate report.

e. Such parts of the transcript of testimony as the parties may designate to explicate the trial examiner's findings of fact as set out in pp. 3 through 7 of the intermediate report, which findings of fact are accepted as correct and proper in all respects.

III. Dates for Filing of Briefs and Joint Appendix

Petitioner's opening brief and the joint appendix shall be filed on or before October 15, 1957.

Respondent's brief shall be filed on or before November 15, 1957.

Petitioner's reply brief, if any, shall be filed on or before December 5, 1957.

Herbert S. Thatcher,
Counsel for Petitioner.

Stephen Leonard,
Associate General Counsel,
National Labor Relations Board,
Counsel for Respondent.

September 23, 1957.

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13968

GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL 270 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO, ET AL.,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Before: Washington, Acting Chief Judge, in Chambers.

ORDER

Upon consideration of the prehearing conference stipulation submitted by counsel for both sides in the above case, it is

ORDERED that the aforesaid stipulation be approved and that the Clerk be, and he is hereby, directed to file said prehearing conference stipulation forthwith.

It is FURTHER ORDERED that the prehearing conference stipulation be printed in the joint appendix and shall control further proceedings in this case unless modified by further order of this Court.

Dated: September 6, 1957.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD FIFTEENTH REGION

GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL 270 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO, AND INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO, AND MURRAY W. MILLER, TRUSTEE FOR LOCAL NO. 270 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO, AND ROBERT L. DIAZ, JR., AND WARREN G. DIAZ, SR., DOING BUSINESS AS DIAZ DRAYAGE COMPANY	Case No. 15-CC-50

COMPLAINT

It having been charged by Robert L. Diaz, Jr., and Warren G. Diaz, Sr., doing business as Diaz Drayage Company, that General Truck Drivers, Chauffeurs, Warehousemen & Helpers Local 270 of the International Brotherhood

of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, herein called Respondent Local 270; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, herein called Respondent Teamsters; and Murray W. Miller, Trustee for Local No. 270 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, herein called Respondent Miller; herein collectively called Respondents, have engaged in and are now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 61 Stat. 136, as amended, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, has caused the Acting Regional Director for the Fifteenth Region, as agent for the Board, designated by the Board's Rules and Regulations, Series 6, Section 102.15, to issue this Complaint and allege as follows:

1.

Respondent Local 270 Respondent Teamsters are labor organizations within the meaning of Section 2 (5), 8 (b) and 10 (1) of the Act, and at all times material herein have been and are now engaged in promoting and protecting the interests of their employee members and in transacting business.

2.

At all times material herein, Respondent Miller was, and is, the Trustee for Respondent Local 270, duly appointed by Respondent Teamsters in accordance with its Constitution, to take charge and control of the affairs of Respondent Local 270 under the supervision of Respondent Teamsters. Respondent Teamsters, through said Trustee, at all times material herein, has had full and complete control over the affairs, business and transactions of Respondent

Local 270, and possession of the funds, books, papers and other properties of Respondent Local 270. By virtue of said trusteeship, Respondent Miller, at all times material herein, has been an agent of Respondent Teamsters within the meaning of Sections 2 (13, 8 (b) and 10 (1) of the Act.

3.

Robert L. Diaz, Jr., and Warren G. Diaz., Sr., are co-partners doing business as Diaz Drayage Company, herein called Diaz, with their principal office and place of business at 2017 Law Street, New Orleans, Louisiana, and are engaged in the business of local trucking and hauling of petroleum products from the terminals of various oil companies to the docks and wharves at the Port of New Orleans for export in interstate and foreign commerce. During the year ending December 31, 1955, which period is representative of all times material herein, Diaz received approximately $150,000 for such services rendered to Delta Petroleum Company, McMillan Petroleum Corporation and American Liberty Marketing Company, each of which sells and ships goods valued in excess of $100,000 annually to points outside the State of Louisiana.

4.

For some period of time, and at all times material herein, the oil products delivered by Diaz employees to the docks and wharves at the Port of New Orleans and unloaded by them were customarily checked by employees of Ryan Stevedoring Company, whose employees are members of or are represented by Dray Clerks Union Local No. 1655, International Longshoremen's Association, Independent.

5.

Since in or around June, 1956, Respondents, through

Respondent Local 270, have been engaged in a campaign to force or require Diaz to recognize them as the collective bargaining representative of Diaz' employees.

6.

At no time material herein have Respondents, or any of them, been certified under the provisions of Section 9 of the Act as the collective bargaining representative of any of Diaz' employees at its New Orleans terminal.

7.

In furtherance of their objectives set forth in paragraph 5 above, since on or about August 1, 1956, Respondents have picketed Diaz' office, terminal and garage located at 2017 Law Street, New Orleans, Louisiana, where Diaz' truck drivers and helpers report daily in the course of their employment.

8.

Also in furtherance of their objectives set forth in paragraph 5 above, since on or about August 1, 1956, Respondents have picketed at the wharves and docks at the Port of New Orleans whenever a truck driven by a driver employed by Diaz arrived at said wharves and docks to deliver Delta Petroleum products for shipment and have continued the picketing as long as such truck remained on said premises.

9.

On August 1 and August 2, 1956, at the Pauline Street wharf in the Port of New Orleans, authorized pickets of Respondents distributed to employees of Ryan Stevedoring Company and other employers leaflets upon which the following language appeared:

"THIS PICKET IS DIRECTED AT THE
EMPLOYEES OF DIAZ DRAYAGE COMPANY.
WE ARE ATTEMPTING TO ORGANIZE THE
EMPLOYEES OF DIAZ DRAYAGE COMPANY.
THIS IS ALL I CAN TELL YOU
ACCORDING TO LAW."

10.

On or about August 1 and August 2, 1956, Respondents, by and through their authorized pickets, picketed at the Pauline Street wharf at the Port of New Orleans with picket signs reading as follows:

"ORGANIZATIONAL
PICKET
DIAZ DRAYAGE CO.
DIAZ EMPLOYEES
IS NON-UNION
JOIN OUR UNION
FOR BETTER WAGES AND
WORKING CONDITIONS
GEN. TRUCK DRIVERS LOCAL 270
A.F. OF L. C. I. O."

11.

As a consequence of Respondents' acts and conduct set forth in paragraphs 8, 9, and 10 above and of other acts and conduct by Respondents, employees of Ryan Stevedoring Company and of other employers, have refused to check, clerk, transport or otherwise handle or work on goods and commodities hauled to the docks and wharves at the Port of New Orleans by Diaz.

12.

By their acts and conduct set forth in paragraphs 8, 9 and 10 above, and by orders, directions, instructions, re-

quests, appeals, solicitation, and by other means, Respondents have engaged in, and have induced and encouraged employees of Ryan, and of other employers, to engage in strikes or concerted refusals in the course of their employment to transport, or otherwise handle or work on goods, articles, materials or commodities or to perform services for their employers.

13.

Objects of Respondents' acts and conduct set forth in paragraphs 8, 9, 10, 11 and 12 above, were and are:

(1) to force or require Ryan and other employers and persons to cease handling, transporting or otherwise dealing in the products hauled by Diaz, and to cease doing business with Diaz; and

(2) to force or require Diaz to recognize or bargain with Respondents, or some of them, as the collective bargaining representative of Diaz' employees, although none of Respondents has been certified as the representative of any of such employees in accordance with the provisions of Section 9 of the Act.

14.

Respondents, by the acts described in paragraphs 8 through 13 above, and by each of said acts, have engaged in and are now engaging in unfair labor practices affecting commerce within the meaning of Section 8 (b) (4) (A) and (B) and Section 2 (6) and (7) of the Act.

Signed at New Orleans, Louisiana, this 23rd day of August, 1956.

CHARLES M. PASCHAL, JR.,
Acting Regional Director,
National Labor Relations Board,
Fifteenth Region, 820 Lowich Building, 2026 St. Charles Avenue, New Orleans, 13, Louisiana.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD
FIFTEENTH REGION

In the Matter of: GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS LOCAL 270 OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO and MURRAY W. MILLER, TRUSTEE FOR LOCAL 270 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO and ROBERT L. DIAZ, JR., AND WARREN G. DIAZ, SR., DOING BUSINESS AS DIAZ DRAYAGE COMPANY	Case No. 15-CC-50

ANSWER OF RESPONDENTS

Come now Murray W. Miller, Trustee for Local 270 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, Interna-

tional Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, General Truck Drivers, Chauffeurs, Warehousemen & Helpers Local 270 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, Respondents herein, and file this their answer to the complaint issued by John F. LeBus, Regional Director of the Fifteenth Region of the National Labor Relations Board:

1.

Respondents admit the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the complaint.

2.

Respondents deny the allegations contained in paragraph 11 of the complaint except that on information and belief some employees of Ryan Stevedoring Company have refused to handle or work on goods and commodities hauled to the docks and wharves at the Port of New Orleans by Diaz.

3.

Respondents deny the allegations contained in paragraphs 12, 13 and 14 of the complaint.

4.

And further answering, Respondents admit that representatives of Respondent local union have picketed the trucks of Diaz in a lawful manner pursuant to rules for permissible ambulatory picketing laid down by the National Labor Relations Board in the matter of Moore-Drydock Company.

WHEREFORE, Respondents pray that this answer be termed good and sufficient and that this complaint against

Respondents be dismissed in its entirety and for all general and equitable relief.

FRED J. CASSIBRY,
Attorney for Respondents,
1240 N. B. C. Bldg.,
New Orleans, Louisiana.

PARISH OF ORLEANS
STATE OF LOUISIANA

Before me, the undersigned authority, personally came and appeared, FRED J. CASSIBRY, who, after being duly sworn, deposed and said: That he is the attorney for Respondents in the foregoing Answer; that he has read same and all the allegations and facts therein contained are true and correct to the best of his knowledge, information and belief.

FRED J. CASSIBRY.

SWORN TO AND SUBSCRIBED BEFORE ME THIS 29TH DAY OF AUGUST, 1956.

F. IRWIN DYMOND,
Notary Public.

POWER OF ATTORNEY

Know all men by these presents, that I, Charles Winters, President and Business Manager of Local 270, General Truck Drivers, Chauffeurs, Warehousemen and Helpers, AFL-CIO, acting for and on behalf of the Executive Board of said local and acting pursuant to their instructions, set out in a Resolution adopted by the said Executive Board on August 14, 1956, a copy of which is attached and made a part hereof, have made, constituted and appointed, and by these presents do make, constitute and appoint Fred J. Cassibry true and lawful attorney for Local 270, General Truck Drivers, Chauffeurs, Warehousemen and Helpers,

AFL-CIO and in its name, place and stead to file all necessary pleadings in the matter of General Truck Drivers Local 270, et al, Case No. 15-CC-50 now pending before the National Labor Relations Board and giving and granting into said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all interests and purposes as it might or could do if personally present, with full power of substitution and revocation hereby ratifying and confirming all that said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof, I have hereunto set my hand and seal, this 11th day of September, 1956, sealed and delivered-presence of.

JAMES R. LAMY
CLARENCE R. DENNIES

CHARLES D. WINTERS.

STATE OF LOUISIANA
PARISH OF ORLEANS

Be it known, that on the 11th day of September, 1956, and before me, Burton G. Klein, a notary public in and for the Parish of Orleans, State of Louisiana, duly commissioned and sworn, personally came and appeared CHARLES WINTERS to me personally known, and known to me to be the same person described in and who executed the above Power of Attorney and he acknowledged the above Power of Attorney to be his act and deed.

In testimony whereof I have hereunto subscribed my name and affixed my seal of office, the day and year last above written.

BURTON G. KLEIN,
Notary Public.

Fred Cassibry, Dymond & Cassibry, 1240 Nat. Bank of Commerce Bldg., N. Rlns.
Re: General Truck Drivers, etc. Local 270, et al, and Robert L. Diaz, et al Case No. 15-CC-50.

Pursuant to NLRB regulations, Section 102.21, you and/or Charles Winters are hereby authorized to file answer on behalf of International Union and me.

MURRAY W. MILLER,
Chairman & Director.

RESOLUTION

Be it resolved by the Executive Board of Local 270, General Truck Drivers, Chauffeurs, Warehousemen and Helpers, AFL-CIO, that Charles Winters, President and General Manager, is hereby authorized and directed to give Fred J. Cassibry, Attorney at Law, full power of attorney to file all necessary pleadings on behalf of said Local 270 in connection with any complaint which may be issued as a result of charges filed before the National Labor Relations Board against Local 270 by Robert L. Diaz, said charges bearing the number 15-CC-50.

That said Charles Winters is further directed and authorized to take any further steps as is necessary and proper in the premises.

Certified as true copy of Resolution passed unanimously by the Executive Board, Local 270, General Truck Drivers, Chauffeurs, Warehousemen and Helpers, AFL-CIO.

JAMES SCHWEHM,
Secretary & Treasurer.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of: GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS LOCAL 270 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO and INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO and MURRAY W. MILLER, TRUSTEE FOR LOCAL NO. 270 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO and ROBERT L. DIAZ, JR., AND WARREN G. DIAZ, SR., DOING BUSINESS AS DIAZ DRAYAGE COMPANY	Case No. 15-CC-50

DECISION AND ORDER

On November 6, 1956, Trial Examiner Thomas N. Kessel issued his Intermediate Report in the above entitled proceeding, finding that Respondents had engaged in and were

engaging in certain unfair labor practices and recommending that they cease and desist there from and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondents filed exceptions to the Intermediate Report and a supporting brief.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions and recommendations of the Trial Examiner.

In agreeing with the Trial Examiner, we adopt his analysis of the record as establishing that an object of the Teamsters' picketing at the Port of Embarkation was to induce employees of Ryan Stevedoring Company to cease handling the oil delivered in Diaz' trucks in order to disrupt Diaz' business relations with its customers and thereby compel Diaz to accede to the Teamsters' demands for recognition and a contract. Thus, we note that adequate communication with all Diaz truckers was possible at the Diaz garage and office; that Local 270 could reasonably anticipate, based on past observance of its picket lines at the Port by ILA Local 1655, that Local 1655 members employed by Ryan would cease working upon the appearance of a picket regardless of the legend on the picket sign; that Local 270 made no effort to disabuse Ryan's employees of the notion that the picketing was to encourage them to cease servicing Diaz' trucks; and finally, the agreement between Winters, Local 270 president, and Maxwell of Delta Petroleum, that the latter would try to get his company to replace Diaz with another trucker in return for Winter's promise not to re-

sume picketing at the Port after dissolution of the State injunction on August 13, 1956 until the trucks already loaded or enroute to the Port could be unloaded.

Moreover, we agree with the Trial Examiner that it is irrelevant, in determining whether Respondents' actions violated Sections 8 (b) (4) (A) and (B) that the picketing met the standards for ambulatory situs picketing set out in *Sailors' Union of the Pacific, AFL, (Moore Drydock Co.,)*, 92 NLRB 547, since Diaz had a separate place of business at which Respondents could and did adequately publicize their dispute with Diaz.[1]

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, and General Truck Drivers, Chauffeurs, Warehousemen and Helpers, Local 270 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, and Murray W. Miller, Trustee of Local 270, their officers, agents, successors and assigns shall:

1. Cease and desist from inducing or encouraging employees of Ryan Stevedoring Company, or the employees of any employer other than Robert L. Diaz, Jr. and Warren G. Diaz, Sr., doing business as Diaz Drayage Company, to engage in a strike or concerted refusal in the course of

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[1] *Brewery and Beverage Drivers and Workers, etc., (Washington Coca-Cola Bottling Works, Inc.)*, 107 NLRB 299, 302-303 enf'd 220 F. 2d 380 (C.A. D.C.); *United Steel Workers of America, AFL-CIO and its Local 5246 (Barry Controls, Inc.)*, 116 NLRB No. 207.

their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is (a) to force Ryan Stevedoring Company or any other employer or person to cease doing business with Robert L. Diaz, Jr., and Warren G. Diaz, Sr., doing business as Diaz Drayage Company, or (b) to force or require Robert L. Diaz, Jr. and Warren G. Diaz, Sr., doing business as Diaz Drayage Company, to recognize or bargain with Teamsters Local 270, as collective bargaining representative of its employees, unless and until certified as such representative in accordance with the provisions of Section 9 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Post at the business office of Teamster Local 270 in New Orleans, Louisiana, copies of the notice attached to the Intermediate Report and marked Appendix.[2] Copies of said notice, to be furnished by the Regional Director for the Fifteenth Region shall, after being duly signed by Respondents' representatives, be posted by them immediately upon receipt thereof and be maintained by ~~them for~~ sixty (60) consecutive days thereafter in conspicuous places including all places where notices to their members are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered,

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[2] This notice shall be amended by substituting for the words "THE RECOMMENDATIONS OF A TRIAL EXAMINER" in the caption thereof the words "A DECISION AND ORDER." In the event this Order is enforced by decree of a United States Court of Appeals, the notice shall be further amended by substituting for the words "PURSUANT TO A DECISION AND ORDER" the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER."

defaced, or covered by any other material. The Respondents shall also sign copies of the said notice which the Regional Director shall submit for posting, the Employers willing, at the premises of Diaz Drayage Company and Ryan Stevedoring Company.

(b) Notify the Regional Director for the Fifteenth Region in writing within ten (10) days from the date of this Order what steps Respondents have taken to comply herewith.

Dated, Washington, D. C., March 29, 1957.

BOYD LEEDOM, *Chairman*
PHILIP RAY RODGERS, *Member*
STEPHEN S. BEAN, *Member*
National Labor Relations Board

(SEAL)

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

In the Matter of:

GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS LOCAL 270 OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO

and

MURRAY W. MILLER, TRUSTEE FOR LOCAL 270 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO

and

ROBERT L. DIAZ, JR., AND WARREN G. DIAZ, SR., DOING BUSINESS AS DIAZ DRAYAGE COMPANY

Charles M. Paschal, Jr., and *Asa Armbrister, Esqs.*, of New Orleans, La., for the General Counsel.

Maurice R. Woulfe, Esq., of New Orleans, La., for the Charging Party.

Fred J. Cassibry, Esq., of New Orleans, La.,
for the Respondents.

Before: *Thomas N. Kessel*, Trial Examiner.

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Statement of the Case

Upon a charge filed by Robert L. Diaz, Jr., and Warren G. Diaz, Sr., partners doing business as Diaz Drayage Company, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for the Fifteenth Region (New Orleans, Louisiana), issued his complaint dated August 23, 1956, against the labor organizations named in the above caption and against the above-named Murray W. Miller, trustee for Teamsters Local 270. The complaint alleges that the Respondents engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(4)(A) and (B) and Section 2(6) and (7) of the National Labor Relations Act, 61 Stat. 136, herein called the Act. Specifically, the complaint alleges that the Respondents since June 1956 sought recognition from the Diaz Drayage Company as collective bargaining representative of its employees and in furtherance thereof picketed not only the Diaz Drayage premises, but on August 1 and 2, 1956, picketed also the docks of the Port of New Orleans whenever Diaz Drayage trucks driven by its employees arrived there to deliver petroleum products; that in consequence of the picketing at the docks and by other acts of inducement and encouragement the employees of Ryan Stevedoring Company and the employees of other employers refused to handle the goods delivered to the docks by the Diaz Drayage trucks; and that the Respondent's objectives by such conduct was (1) to force Ryan Stevedoring Company and other employers to cease doing

business with Diaz Drayage, and (2) to force Diaz Drayage to recognize and bargain with the Respondents as the representatives of its employees although none of them was certified by the Board as the representative of these employees. The Respondent's answer admits that they engaged in ambulatory picketing at the wharves and does not deny that in the course of this conduct that some of the Ryan Stevedoring employees refused to handle the products delivered by Diaz Drayage trucks, but denies that their conduct was for unlawful objectives. They further defend their conduct by asserting that it was conducted in accordance with the rules for legitimate ambulatory picketing declared by the Board in the *Moore Dry Dock Company* decision, 92 NLRB 547. Copies of the formal documents filed herein and a notice of hearing were duly served upon the parties, and pursuant to said notice a hearing was held at New Orleans, Louisiana, on September 11 and 12, 1956, before the undersigned Trial Examiner duly designated to conduct the hearing. All parties appeared through counsel and were afforded full opportunity to examine and cross-examine witnesses and to present evidence. After the close of the hearing the parties filed briefs which have been duly considered.

From the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

Findings of Fact

I. The Pertinent Commerce Acts

Robert L. Diaz, Jr., and Warren G. Diaz, Sr., partners doing business as Diaz Drayage Company, have their principal office and place of business in New Orleans, Louisiana, where they truck and haul petroleum products from terminals of various oil companies to the docks and wharves at the Port of New Orleans for export in interstate and foreign commerce. During 1955 Diaz Drayage Company re-

ceived approximately $150,000 for such services rendered to Delta Petroleum Corporation and American Liberty Market Company each of which sells and ships goods valued in excess of $100,000 annually to points outside the State of Louisiana.

II. The Labor Organizations Involved

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, and General Truck Drivers, Chauffeurs, Warehousemen & Helpers, Local 270 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, are labor organizations within the meaning of the Act. Murray W. Miller is the trustee of Local 270 designated as such by the first above-mentioned organization and occupied this position during all times relevant to this proceeding.

III. The Unfair Labor Practices

(a) *The dispute between Diaz Drayage and Teamsters Local 270*

In July 1956 Diaz Drayage had contractual relations with an independent labor organization known as Independent Truck Drivers, Warehousemen and Helpers, Local 210. A subsisting contract with this labor organization covering the Diaz truckdrivers and helpers had an October 15, 1957, expiration date. About 5 months before the hearing, approximately in April 1956, Teamsters Local 270 undertook to organize all unorganized drayage and trucking companies in New Orleans including Diaz. James Peter Schwehm, the Local 270 secretary and treasurer who also serves as its business agent on occasion, took charge of the Diaz organizing activity in July 1956. During the latter part of that month he contacted the Diaz owners, Robert and Warren, and presented to them his demand for recog-

nition of Local 270 as the representative of a majority of their truckdrivers and helpers and submitted a contract. At this meeting Schwehm exhibited a group of cards purporting to show adherence to Local 270 by a majority of Diaz employees. In the ensuing period between this meeting and August 1 there followed an abortive attempt to obtain compliance from the Diaz brothers with the Local 270 demands. When these efforts failed Local 270 resorted to the picketing activities which constitute the conduct alleged herein as unlawful.

(b) *The picketing*

Picketing began at 12:30 p. m. on August 1, 1956, when Schwehm stationed a picket at the Diaz premises consisting of its office and garage located at 2017 Law Street in New Orleans. Schwehm proceeded directly from there to the New Orleans Port of Embarkation, a facility operated by the U. S. Army for the receipt and shipment of materials used for military purposes, where Diaz trucks were engaged in the delivery of drums of oil for unloading on the dock by the employees of Ryan Stevedoring Company. He stationed another picket at this location at a point adjacent to the fence which separates the restricted dock area from the outside public area and instructed the picket to walk around Diaz trucks parked there awaiting admittance to the dock for the unloading of their oil cargoes. This picket, as well as the picket at the Diaz Law Street premises, was further instructed to speak to no one and if questioned by anyone merely to hand out a leaflet which contained the following:

> THIS PICKET IS DIRECTED AT THE EMPLOYEES OF DIAZ DRAYAGE CO. WE ARE ATTEMPTING TO ORGANIZE THE EMPLOYEES OF DIAZ DRAYAGE CO. THIS IS ALL I CAN TELL YOU ACCORDING TO LAW.

The identical signs carried by the pickets at both Law Street and the Port of Embarkation stated:

ORGANIZATIONAL
PICKET
DIAZ DRAYAGE CO.
NON-UNION
DIAZ EMPLOYEES
JOIN OUR UNION
FOR BETTER WAGES AND
WORKING CONDITIONS
GEN. TRUCKS DRIVERS LOCAL 270
A. F. L. C. I. O.

Within a few minutes after the picket had been stationed near the fence he was ordered away from there by the Army officers in charge of security at the Port. The picket was thereupon moved by a security guard to the ramp over which vehicles approaching the docks had to proceed. As shown on the sketch of the port area in evidence (G. C. Exhibit 2) and as stipulated by counsel, the picket was first moved by the guard to a point on the ramp more than 200 feet from the restricted dock area and then was moved to a further location distant another 216 feet at a right angle from the first mentioned point where the trucks traversing the ramp entered from Chartres Street, the public highway. The picket remained at this latter location during the balance of the afternoon on August 1 and was stationed there during the morning of August 2 until the security officers permitted him to resume picketing at the entrance to the restricted dock area where he had been initially stationed by Schwehm on the preceding day. At no time during the course of the foregoing picketing at the immediate dock area or at the places to which the picket was moved on the ramp by the security guards did these activities occur when Diaz employees were not present at the dock.

There is no evidence that the picket at the Port of Embarkation at any time exceeded Schwehm's instruction not to speak to anyone. There is also no evidence that during the course of this picketing either Schwehm or anyone else acting in behalf of the Respondents spoke directly to any employees working at the docks other than the Diaz employees.

Picketing at the Port of Embarkation ceased on August 2 and did not thereafter resume. It also ended without resumption at the Diaz premises on August 3. On this latter date picketing by Local 270 was restrained by a State court injunction which was dissolved on August 13. A Federal court order restraining secondary picketing was obtained on August 17 and is still effective.

(c) *The refusal by Ryan Stevedoring employees to unload Diaz trucks because of the picketing by Local 270*

Clarence Dennies was on August 1 one of the Ryan Stevedoring employees checking the unloading of Diaz trucks at the docks. He had stopped checking Diaz deliveries that day when it began to rain at 11:30 a. m. At about 10 minutes before 1 p. m. he observed the picket and the sign carried by him and immediately determined that he would not receive the Diaz oil because, as he testified, he "just didn't want to get involved in any labor dispute between Diaz and Local 270." He thereupon telephoned Lawrence King, Ryan's clerk responsible for unloading operation on the dock, and informed him of the presence of the picket and his refusal to become involved in the dispute. King told him to stand by until he arrived. While awaiting King, Dennies told the Diaz foreman, Williams, and Port Guard Martin White of his refusal to work with Diaz products because of the picketing. As King reached the dock Earl Dennies, brother of Clarence, also arrived. Earl Dennies is the president and business agent of Local 1655 of International Longshoremen's Association, Independent, which

represents employees of Ryan Stevedoring Company.[1] His appearance at the dock resulted from King's telephone call to him relaying the information received from Clarence Dennies. When all these persons had congregated on the dock, Clarence repeated to his brother and again to King his unwillingness to handle the Diaz oil deliveries so long as the picketing continued. Earl merely warned him of the risk to his employment, and King directed him only to proceed to another sector on the dock to do work unrelated to Diaz deliveries. Ryan Stevedoring employee Jules Dennies, a nephew of Clarence and Earl Dennies, had been assigned by King to work with Clarence on the unloading of Diaz trucks. He also refused to do this work and was thereupon given other work by King. No attempt was made by King to obtain other clerks to unload Diaz trucks, and none of these trucks was thereafter unloaded at the dock on August 1. Three trucks fully loaded and one partially unloaded returned that afternoon with their cargoes to the Diaz premises.

On the morning of August 2, King again assigned Clarence Dennies and employee J. P. Bann[2] to unload Diaz trucks at the dock. A few minutes later, when these employees arrived at the dock from King's office, they were informed that the picket was stationed at the foot of the ramp on Chartres Street. Bann and Dennies then telephoned King and advised that because of continuation of the picketing they refused to check Diaz oil. King thereupon notified the Ryan Stevedoring officials of this development but received no instructions from them. On his own initiative he called Bann and Dennies to his office and then

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[1] King is also a member of Local 1655 and is chairman of the grievance committee. Clarence Dennies was on August 1 a permit holder of Local 1655 and paid dues to it. He was also a member of Teamsters Local 270.

[2] Bann is a member of ILA Local 1655.

assigned other work to them. Trucks of other cartage companies were unloaded that day at the dock by clerks who received their assignments from King. He did not assign these clerks to Diaz trucks none of which was unloaded on August 2. Four trucks which had been sent by Diaz to the dock returned with their cargoes that morning to the Diaz premises.

(d) *Evidence relative to the ability of Local 270 to reach Diaz employees at the Diaz premises; the explanation for Local 270's decision to picket the docks.*

As noted, the Diaz place of business consists of its garage and office located at 2017 Law Street in New Orleans. Diaz employs between 25 and 30 drivers and helpers and has 27 trucks which it uses in its business. All these trucks, except as hereinafter specified, always housed at the Diaz garage and on a parking lot about a block away on Annette Street. When the truckdrivers report in the morning they enter the garage through an adjacent driveway where they pick up the keys to the trucks. Their helpers may enter with them or wait in front of the garage for the trucks to emerge. At the end of the day the drivers and helpers return to the garage where their trucks are serviced and readied for the following day. The exception to this procedure involves the occasional situation when a Diaz truck is to be loaded with oil during the night at the premises of the Delta Petroleum Company which is 7 or 8 miles distant from the Diaz garage, and where the driver of one of such trucks lives near Delta Petroleum. In this circumstance the driver is permitted to go directly to his home without reporting to the garage if he is at the Delta Petroleum yard at quitting time. This happens seldom according to Robert L. Diaz, Jr. If a truck left overnight at Delta had been loaded before 7 a. m., the driver living in the neighborhood is permitted to go there directly in the morning to pick up his truck and to proceed with his delivery without first

reporting to the Diaz garage. According to Foreman Williams this may occur about once in the course of a month.

The principal Diaz customer in the period immediately before August 1 was Delta Petroleum Company for whom Diaz hauled oil to the Port of Embarkation. Twelve to seventeen of the Diaz trucks were engaged in this operation. The rest of the Diaz trucks also hauled oil to the Port of Embarkation or to other docks along the riverfront for other customers. About 90 percent of all the Diaz business consisted of transporting oil to the port of Embarkation. In the course of such activity the Diaz drivers made 2 or 3 trips between the premises of the oil suppliers and the Port of Embarkation. Not much time was spent by the drivers at the suppliers' premises, but because of the frequent insufficiency of clerks at the dock to handle unloading operations, the drivers sometimes spent appreciable periods there. Robert L. Diaz, Jr., testified that "the Port is jammed up a lot of times" with a line of trucks, and that a truck will be held up there for as long as an hour "pretty often," and that there are times when the drivers must wait 2 to 4 hours to have their truck unloaded. By contrast, Diaz estimated that the drivers spend a total of about 25 minutes each day at his garage. It takes about 5 to 7 minutes for the drivers to pick up their keys in the morning and to depart with their trucks, and about 15 minutes to return their trucks in the afternoon and to get them ready for the next morning's departure.

Charles D. Winters, the aforementioned president and business agent of Local 270, testified that during the period before August 1 when the Diaz employees were being organized, he had studied the question of where these employees could best be reached in the event of a strike. He had concluded from his studies of the situation that the best place for this purpose was the Port of Embarkation because they spent most of their time there. Accordingly,

it was determined by Local 270 that picketing should be conducted at this location.

(e) *Other evidence of conduct by Local 270 relative to its objective in picketing at the Port of Embarkation.*

As related, Delta Petroleum Company was the principal customer for whom Diaz hauled oil during the period preceding August 1. Schwehm had tried to contact Robert L. Diaz, Jr., in the morning of August 1, and upon being notified that he was at Delta went there to advise that if no consideration was to be given to the Local 270 contract demands, that picketing would begin forthwith. While at Delta, Schwehm was questioned by the Delta superintendent as to what was going on and, after he was informed of the possibility of strike action, obtained Schwehm's promise to notify Maxwell, a Delta official, should this contingency develop. Schwehm called Maxwell that day to tell him that Diaz would be picketed. He was not certain as to what Maxwell told him, but Schwehm believes he may have stated that Delta would continue to use Diaz even if there were picketing. Schwehm subsequently had other conversations by telephone with Maxwell. He believes that he had next talked to him late in the day of August 1 and that Maxwell then expressed his understanding that the docks were not to have been picketed until August 2. He further revealed to Schwehm, that if Diaz could not service Delta during the strike that other drayage would be obtained. Schwehm denied suggesting other trucking companies to Maxwell. According to Schwehm, Maxwell reached him by telephone in the morning of August 2 and inquired about the wage terms of the Local 270 contract presented to Diaz, and then commented to the effect that these terms should be acceptable to Diaz. Schwehm conceded that Maxwell may also have told him that the Diaz trucks (loaded with Delta oil) had been sent to the docks that morning against his instructions and that he was going to communicate with Diaz

to have the trucks removed from the docks. Schwehm further conceded the possibility that Maxwell called him later that day to advise he had instruced Diaz to pull the trucks from the docks.[3] He denied having had any understanding with Maxwell that he would not send Diaz trucks to the docks on August 2. There apparently was other discussion between Schwehm and Maxwell before August 3 for the former related that on that date he had held a meeting at the Diaz premises with its drivers and that he had advised Warren Diaz that Maxwell had indicated Delta's willingness to adjust its rates with Diaz if the latter would sign a contract with Local 270 providing for higher wages for the covered employees.

When the State court injunction against picketing of Diaz by Local 270 was dissolved on August 13, aforementioned Charles D. Winters, president and business agent of Local 270, received a call from Maxwell requesting that picketing not be resumed until Delta oil on trucks already loaded or enroute to the docks was unloaded there, with a promise that if there were such cooperation, he would instruct the responsible persons at Delta to use other truckers until the Diaz dispute was settled. He also stated that if Local 270 were again legally restrained from picketing, Delta would resume use of Diaz services. Winters consented to Maxwell's request.

The General Counsel elicited testimony from several witnesses to the effect that Local 270 knew or expected that if it picketed the Port of Embarkation this action would impel unionized employees of other employers to honor its picket and to refuse to handle goods delivered to the docks

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[3] Robert L. Diaz, Jr., testified without objection that Maxwell had called him on August 2 to request recall of Diaz trucks from the Port because he, Maxwell, had told a person from the Teamsters that he would remove these trucks from the Port and he wanted to keep his word.

by Diaz trucks. As previously noted, Schwehm did not while at the docks on August 1 or 2 speak to the Ryan Stevedoring employees, or for that matter to any employees of employers other than Diaz. While there was some testimony by Diaz Foreman Williams indicating opportunity for discussion between Schwehm and ILA Local 1655 President Dennies at the dock on August 1, I am satisfied from Schwehm's and Port Guard White's testimony that there were no contacts and no discussions between Schwehm and Dennies at the docks during the picketing. I am further satisfied that Schwehm, who admitted familiarity with Dennies for many years and aware of his official connection with ILA Local 1655, had not discussed the Diaz dispute with him in advance of the picketing. Schwehm denied that he had known before he stationed the picket at the docks which company's employees unloaded the Diaz trucks and specifically denied knowing that Ryan employees performed this operation. He admitted that he had known Clarence Dennies but claimed he had not known for whom he worked although he knew he did work on the docks. Local 270 President Winters conceded knowing that the clerks who checked Diaz oil deliveries at the docks were represented by ILA Local 1655.

Schwehm testified that all local unions in New Orleans honor one another's picket lines and expect such reciprocation from each other. Winters testified that ILA Local 1655 had before August 1 honored Teamsters picket lines at the Port of New Orleans. He disclaimed expectation, however, that it would honor the picketing herein involved. Earl Dennies testified that it is Local 1655 policy to honor picket lines of other labor organizations, and it was stipulated by the Respondents that members of Local 1655 had in the past honored picketing by Teamsters Local 270 at the Port of New Orleans as well as the picket lines of other labor organizations. Lawrence King, the aforementioned Ryan Stevedoring clerk and chairman of the ILA Local 1655

grievance committee, also affirmed that it is the policy of this labor organization to honor picket lines of other unions.

(f) *Analysis and Conclusions*

The General Counsel asserts a dual basis for the illegality of the picketing at the Port of Embarkation. First, this conduct is charged as unlawful *per se* because of the opportunity in this case available to the Teamsters to reach all of the Diaz employees at its premises to which they report in the morning before starting work and where they return in the afternoon before quitting. Second, it is charged that the real motive behind the picketing at the Port, as shown by the whole record, was not just to organize the Diaz employees who happened to be there, but to induce the employees of other employers to cease handling goods delivered by the Diaz trucks in order to disrupt the business of that company and to cause it thereby to capitulate to the Teamsters demands for recognition and a contract.

The Teamsters defend as follows: (1) The Board's *per se* doctrine is an invalid theory which has been judicially rejected; (2) the *per se* doctrine is here not appropriate because the Diaz employees could not effectively be reached at the Diaz premises, whereas the Port of Embarkation was the place where they could most effectively be contacted; (3) the picketing was conducted in accordance with the Board and Court judicially approved *Moore Dry Dock* criteria; (4) the purpose of the picketing was not for the illegal object of inducing employees of other employers to cease work, but for the lawful purpose of organizing the employees of Diaz with whom the Teamsters have their dispute; and (5) the picketing was peacefully conducted for organizational purposes and as such is protected by the Constitution and Section 7 of the Act.

The Board has in several recent cases involving violations of Section 8(b)(4)(A) and (B) declared that ambulatory picketing by a labor organization at the premises of a neutral employer is *per se* unlawful where the employer with whom the labor organization has its dispute maintains a fixed place of business in the vicinity which can effectively be picketed.[4] As the Board continues to adhere to this principle despite disagreement therewith by certain courts[5], it must in this proceeding be given controlling consideration.

The record indisputably shows that the Diaz premises constitute a fixed place of business in the vicinity of the dispute in question to which all of its employees, with insignificant e ·eption, report twice daily. Because the Teamsters nevertheless chose to picket elsewhere at a place where employees of a neutral employer work, I am compelled, in accord with the foregoing Board principle, to find that such picketing was *per se* violative of Section 8(b)(4)(A) and (B) of the Act. I have considered the clear evidence that the Diaz employees spend only 25 minutes or less daily at their employer's premises and spend substantially greater periods ranging up to several hours daily at the Port of Embarkation where the unlawful picketing occurred, and the consequently greater convenience and practicality to the Teamsters in picketing at this situs. However, contrary to the Teamsters' position, this is not

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[4] *Washington Coca-Cola Bottling Works, Inc.*, 107 NLRB 299; *Thurston Motor Lines, Inc.*, 110 NLRB 748; *Associated General Contractors of America, Inc., Georgia Branch (Campbell Coal Company)*, 110 NLRB 2192; *Associated General Contractors Employers Association of Omaha, Nebraska, Inc.*, 116 NLRB No. 65.

[5] *Sales Drivers* v. *N. L. R. B. (Campbell Coal Company)*, 229 F. 2d 544 (C. A. D. C.); *N. L. R. B.* v. *General Drivers, Warehousemen and Helpers, Local 968 (Otis Massey)*, 225 F. 205 (C. A. 5).

an extenuating circumstance preventing application of the Board's *per se* principle.[6]

The Teamsters rely heavily on the defense that picketing at the Port of Embarkation was validated by the observance in the course thereof of the *Moore Dry Dock* criteria evolved by the Board for picketing in ambulatory situs situations. Despite my view that the picketing was conducted in compliance with all these criteria, I reject that defense. The Board's recent holding in the *Associated General Contractor's* case, *supra,* has added a fifth condition to the four enunciated in *Moore Dry Dock* which must also be satisfied before ambulatory secondary picketing at a neutral situs may be regarded as legally defensible. This condition was stated in the Trial Examiner's report in the foregoing *Associated General Contractor's* case and unqualifiedly adopted by the Board as follows:

> . . . the Board in ambulatory situs situations, such as exists generally in the transportation industry, and such also as exists in the case at bar, has in effect added to the four expressed in Moore Dry Dock, a fifth condition. . . . That fifth condition is substantially this: That such picketing at neutral premises (as of trucks of a primary employer while making deliveries to customers) will not be regarded as privileged primary picketing absent a showing that the primary employer has in the vicinity no permanent establishment that may be picketed effectively.'

As hereinabove explicated, the primary employer in this proceeding (Diaz) has a permanent establishment in the vicinity which the Teamsters could have picketed effectively. Consequently, the picketing of neutral premises at the Port constituted nonobservance of the foregoing fifth

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[6] See *Local 612, International Brotherhood of Teamsters (Goodyear Rubber Company of Alabama)*, 112 NLRB 30, where some of the primary employer's employees (over-the-road drivers) reported to the employer's premises, not daily, but several times weekly.

condition in violation of Section 8(b)(4)(A) and (B) of the Act.

I am further satisfied from a consideration of the entire record than an object of the Teamsters' picketing at the Port of Embarkation was to induce the employees of Ryan Stevedoring Company to cease handling the oil delivered in Diaz trucks in order to disrupt Diaz business relations with its customers and thereby to compel capitulation by Diaz to the Teamsters' demands for recognition and a contract. I am persuaded this is so because of the following circumstances. By confining picketing to the Diaz premises where all the employees reported, the Teamsters could have adequately communicated to them the message conveyed by the pickets at the Port. The signs carried by the pickets at the Diaz premises and at the Port were identical as were the instructions to the pickets for dissemination of any other information concerning the dispute. As the opportunity for reaching the employees at the Diaz premises with this message was adequate, the question necessarily arises as to the purpose in duplicating the primary picketing and extending it to the secondary area. I do not believe it to have been intended as an idle gesture merely encompassing additional exposure of the Diaz employees to the picket sign with which they had already been confronted at their employer's premises. I am convinced that its purpose was the achievement of a more practical gain by its instigators not obtainable by limiting the picketing to the Diaz fixed place of business. Because the responsible officials of Local 270 knew that their picket lines at the New Orleans docks had in the past been honored by ILA Local 1655, and that Local 1655 members checked and unloaded Diaz deliveries at the docks, these officials must have reasonably anticipated that the appearance of the picket at the docks would cause Ryan's employees handling the Diaz deliveries to cease work. The fact is that this foreseeable consequence became an actuality when the mere

sight of the Local 270 picket produced the spontaneous refusal of Ryan employees Clarence Dennies, Jules Dennies, and J. P. Bann to work with Diaz deliveries. While it is unquestionably true that there was no direct solicitation of these employees by a Local 270 representative to cease work, neither was there any information given to these employees by such representative that the picketing was not aimed at them. If Local 270 did not intend that the picketing should induce them to cease work, its representatives should, in the circumstances, have taken reasonable steps to avoid this inevitable consequence of its conduct. The fact that nothing along these lines was done was further indicative of intent to secure their refusal to work as a consequence of the picketing.[7]

Also contributing to my conclusion that the picketing at the Port was intended to sever the Diaz operations with its customers is the arrangement between Local 270 President Winters and Maxwell, the aforementioned Delta Oil Company official, following dissolution of the State court injunction on August 13, whereby Winters promised not to resume picketing at the Port until trucks already loaded or enroute to that destination with Delta's oil were unloaded, provided that Maxwell would try to have his company substitute another trucker for Diaz while the dispute continued. While such pressure on an employer is not of itself unlawful, it strengthens my belief that the picketing at the Port was not limited to the organizational purposes proclaimed by Local 270 but was also applied by it to produce an economic squeeze on Diaz by cutting off its business relations with its customers. In this connection, I have not regarded the conversations between Schwehm and Maxwell as persuasive evidence of intent of Local 270 to cause Delta to replace Diaz with another trucker, for, all

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[7] See the Board's *Campbell Coal Company* Supplemental Decision, 116 NLRB No. 124.

that these conversations show is apprehension by the Delta official that his company would be hampered by disruption of Diaz operations during the strike and that he would, therefore, on his own initiative circumvent this contemplated inconvenience by getting another trucker. That Schwehm did not seek to dissuade Maxwell from adopting such a course was not by itself, in my view, indication that the Local 270 strike strategy included a plan to bring the Diaz business operations to a halt through the imposition of secondary pressures on its neutral customers.

Finally, I reject the contention that the picketing at the Port was protected by the Constitution and by Section 7 of the Act. The constitutional argument is specifically overcome by the holding of the court in the case of *N. L. R. B. v. Truck Drivers Local 738*, 228 F. 2d 791 (C. A. 5), that:

> peaceful picketing is not exempted from the condemnation of Section 8 (b) (4) where an objective—was to induce or encourage concerted action by the employees of a secondary employer. Citing *International Brotherhood of Electrical Workers* v. *Labor Board*, 241 U. S. 694.

That Section 7 of the Act does not protect conduct clearly prescribed by Section 8 (b) (4) requires no comment.

I find that from a consideration of all evidence in this case that the picketing of Diaz trucks at the Port of Embarkation had as one of its purposes the inducement and encouragement of employees of employers other than Diaz to engage in a concerted refusal in the course of their employment to handle products delivered by Diaz in its trucks, or to perform services, with the object of forcing and requiring such other employers to cease doing business with Diaz in order to compel Diaz to recognize and bargain with Teamsters Local 270 although this labor organization was not certified as the representative of the Diaz employees under the provisions of Section 9 of the Act, and that such conduct was violative of Section 8 (b) (4) (A)

and (B) of the Act. I have found that the unlawful conduct was committed directly by Teamsters Local 270 for which it is responsible, and I further find that the other named Respondents are likewise responsible for this unlawful conduct, because at all times material herein the Local 270 parent, the International Teamsters, was in control of and supervised the affairs of Local 270 through its duly designated trustee, Murray W. Miller.[8]

IV. The effect of the unfair labor practices on commerce

The activities of the Respondents set forth in Section 3, above, occurring in connection with the operations of Robert L. Diaz, Jr., and Warren G. Diaz, Sr., partners doing business as Diaz Drayage Company, described in Section 1, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

V. The remedy

Having found that the Respondents have violated Section 8 (b) (4) (A) and (B) of the Act, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. Robert L. Diaz, Jr., and Warren G. Diaz, Sr., doing business as Diaz Drayage Company are engaged in commerce within the meaning of the Act.

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[8] *Thurston Motor Lines, Inc., supra.*

2. By inducing and encouraging employees of Ryan Stevedoring Company to engage in a strike or a concerted refusal in the course of their employment to handle or work on products of Diaz Drayage Company, or to perform services for their employer, with the object of (a) forcing or requiring their employer to cease doing business with Diaz Drayage Company, and (b) forcing and requiring Diaz Drayage Company to recognize or bargain with Teamsters Local 270 as the collective bargaining representative of its employees although it has not been certified as such representative in accordance with the provisions of Section 9 of the Act, the Respondents have engaged in unfair labor practices within the meaning of Section 8 (b) (4) (A) and (B) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, it is recommended that International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, and General Truck Drivers, Chauffeurs, Warehousemen and Helpers, Local 270 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, and Murray W. Miller, Trustee of Local 270, their officers, agents, successors and assigns, shall:

1. Cease and desist from engaging in or inducing or encouraging the employees of Ryan Stevedoring Company or of any other employer to engage in a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any services, where an object thereof is (a) to force

Ryan Stevedoring Company or any other employer or person to cease doing business as Robert L. Diaz, Jr., and Warren G. Diaz, Sr., doing business as Diaz Drayage Company or, (b) to force or require Robert L. Diaz, Jr., and Warren G. Diaz, Sr., doing business as Diaz Drayage Company, to recognize or bargain with Teamsters Local 270 as collective bargaining representative of its employees unless and until certified as such representative in accordance with the provisions of Section 9 of the Act.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Post at the business office of Teamsters Local 270 in New Orleans, Louisiana, copies of the notice attached hereto as an Appendix. Copies of said notice, to be furnished by the Regional Director for the Fifteenth Region, shall, after being duly signed by an authorized representative of each Respondent herein, be posted by said Respondents immediately upon receipt thereof and maintained for a period of sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material. The official representatives of the Respondents herein shall also sign copies of the said notice which the Regional Director shall submit for posting, the Employers willing, at the premises of Diaz Drayage Company and Ryan Stevedoring Company:

(b) Notify the Regional Director for the Fifteenth Region in writing, within twenty (20) days from the date of the receipt of this Intermediate Report and Recommended Order what steps the Respondents have taken to comply herewith.

It is further recommended that unless the Respondents shall within twenty (20) days from the date of the receipt

of this Intermediate Report and Recommended Order notify said Regional Director in writing that they will comply with the foregoing recommendations, the National Labor Relations Board shall issue an order requiring the Respondents, or any of them as the case may be, to take the aforesaid action.

Dated at Washington, D. C., this 6th day of November 1956.

THOMAS N. KESSEL,
Trial Examiner

Appendix

To All Members of General Truck Drivers, Chauffeurs, Warehousemen & Helpers, Local 270, of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO

Pursuant To

The Recommendations Of A Trial Examiner

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act we hereby notify you that:

WE WILL NOT engage in, or induce or encourage the employees of RYAN STEVEDORING COMPANY or of any employer other than Robert L. Diaz, Jr., and Warren G. Diaz, Sr., partners doing business as DIAZ DRAYAGE COMPANY, to engage in a strike or concerted refusal in the course of their employment, to use, manufacture, process, transport, or otherwise handle or work on goods, articles, or commodities, or to perform any services for their respective employers where an object thereof is to force or require any employer or person to cease doing business with Robert L. Diaz, Jr., and Warren G. Diaz, Sr., partners doing business as DIAZ DRAYAGE COMPANY, or to force or require Robert L. Diaz, Jr., and Warren G. Diaz, Sr., partners doing business as DIAZ DRAYAGE COMPANY to recognize or bargain with the undersigned labor organizations, or either of them as the representative or representatives of its employees, unless and until certified as such representatives in accordance with the provisions of Section 9 of the National Labor Relations Act.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO

(Labor Organization)

Dated..... by.....
(Representative) (Title)

GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL 270 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO

(Labor Organization)

Dated..... by.....
(Representative) (Title)

Dated..... by.....
MURRAY W. MILLER, TRUSTEE FOR LOCAL NO. 270 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[245] CHARLES D. WINTERS

[246] a witness called by and on behalf of the Respondent, after first being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Cassibry) What is your job, Mr. Winters? A. I am president and business manager of Local 270.

Q. Do you have an organizational campaign going on at this time? A. Yes, Sir.

Q. How long has your Union been engaged in organizational efforts? A. Locally?

Q. Locally. A. A year and a half.

Q. Who have you had generally in charge of this organizational effort for your local Union? A. Other than myself, the next ranking officer is James Schwehm. In my absence and where I am not able to handle it directly, I assign Jimmie Schwehm.

Q. Mr. Winters, has there been some kind of an understanding or agreement between your International and the International Longshoremen's Association in efforts to organize by both unions? A. There has been an agreement which was titled a mutual assistance agreement. It was negotiated but never operative. It is our position in both the Teamsters International and some [247] sections of the ILA, that agreement has been canceled at the request of ILA.

Q. What has been the result of that cancellation on your asociation with the Local ILA, your local Union's association with the Local ILA Union? A. Well, we never had a chance really to put that mutual assistance plan into effect.

Q. Is there any kind of mutual assistance pact in effect now between your local and the ILA locals on the waterfront? A. No.

Q. Is there any kind of understanding, either written or oral, or agreement by which you both agree to honor one

another's picket lines and to assist one another in organizational efforts? A. No specific agreement with ILA other than any other union. We, as a union, honor all picket lines.

Q. Did you personally direct Mr. Schwehm or any other official of your union to inaugurate the organizational campaign against the Diaz Company? A. I did.

Q. Did you investigate the situation as to the possibilities or organization yourself or did you have to rely upon what your subordinates told you? A. A combination of both. I personally investigated and I had other people on my staff investigate.

[248] Q. Did you personally look at the Law Street address, which is the address of the Diaz Company's principal place of business? A. I did.

Q. Did you have knowledge at the time the organizational efforts began against the Diaz Company of the type of work that he was engaged in? A. Yes.

Q. What was your experience as to your organization of the Diaz employees, your own personal knowledge, Mr. Winters? A. My personal knowledge and experience is that we contacted the employees as best we could. We had several meetings with them, some in our union hall and one in their union hall and general contact with them while they were on the job.

Q. Did you make your organizational efforts at the Law Street address? A. We did at one time, yes.

Q. Now, when you finally decided to strike and picket the Diaz Company, did you make the decision as to where the pickets would be placed? A. Yes.

Q. And what was your decision and why did you decide to picket where you did decide to picket? A. Well, after a study and consultation with the people involved in the organizing campaign, we became aware that people spent very little time at the terminal; we then looked for the

[249] best place to reach them, and our studies showed that that would be at the wharf.

Q. At the Port of Embarkation wharf? A. Port of Embarkation wharf.

Q. What did your study show as to where the employees would send the larger part of their time so that you would be able to contact them? A. We checked three points: the terminal, the Delta Petroleum Company and the Port of Embarkation and our study showed that they spent a greater part of their work there at the Port of Embarkation.

Q. What was your experience as to being able to contact the employees at the Law Street address? A. Very poor.

Q. Is Julius Jones an official of the Teamsters' Local Union? A. No, sir.

Q. Is he on the Teamsters' payroll in any capacity? A. No, sir.

Q. Was he at the time this strike was, on August 1st and August 2nd? A. No, sir.

Q. Is he a member of the Teamsters' Union? A. Yes, sir.

Q. Has he ever been authorized to act officially for the Teamsters' in your organizational efforts? [250] A. No, sir.

Q. Either against Diaz or any other company? A. No, sir.

MR. CASSIBRY: That's all. Answer Mr. Pachal's questions.

TRIAL EXAMINER: Mr. Paschal.

CROSS EXAMINATION

Q. (By Mr. Paschal) Mr. Winters, in conducting your study of the Diaz situation, you went down and you saw trucks. Did you make the study yourself? A. Partially, yes.

Q. And did you go down to the docks and see the trucks unloading down there? A. Yes, sir.

Q. You knew the trucks were unloaded and checked by employees of the Ryan Stevedoring Company, didn't you? A. At that time, no, sir.

Q. You knew that the employees who checked the trucks were represented by Dray Clerks Union No. 1655, didn't you, sir? A. If I didn't, I should, because I want to give you a straight answer.

Q. Yes, sir. And your study showed— A. I am going to answer yes on that.

Q. And the local 1655 had honored your picket lines before August 1st, had they not?

MR. CASSIBRY: Objection. We have already stipulated, [251] I believe, all of that.

TRIAL EXAMINERS Then you withdraw the objection?

MR. CASSIBRY: Yes.

TRIAL EXAMINER: All right, you may answer.

MR. CASSIBRY: I object now because it is irrelevant.

TRIAL EXAMINER: I will overrule the objection.

MR. WINTERS: May I have the question?

Q. (By Mr. Paschal) Yes sir. Local 1655 had honored picket lines of the Teamsters Union at the Port of New Orleans before August 1st, had they not? A. Yes, sir.

Q. And you had reason to believe that if you established a picket line at the docks they would honor it again, too, didn't you, Mr. Winters? A. That wasn't our intention, no, sir.

Q. You had reason to believe that they would honor it, though, did you not? A. You'll have to phrase that a little different. You say I have reason to believe. I have reason to believe many things, but they don't materialize the way that I have reason to believe.

Q. From your experiences you had reason to believe that if you established a picket line at the docks that Local 1655 would honor that picket line, didn't you? A. I did not.

MR. CASSIBRY: I object to the question.

[252] TRIAL EXAMINER: I will sustain the objection. It is argument.

Q. (By Mr. Paschal) Now, Mr. Winters, at one time the Local was under an injunction of the state court not to engage in any secondary picketing or maybe any picketing.

MR. CASSIBRY: Objection. Irrelevant and immaterial.

TRIAL EXAMINER: Has the question been completed?

MR. PASCHAL: No, it's preliminary to the question I was going to ask.

MR. CASSIBRY: Excuse me.

Q. (By Mr. Paschal) Do you recall that the Union was enjoined for a period of time by the state court in connection with the Diaz matter? A. Yes, sir.

Q. And after that injunction was dissolved, did you have any conversation with Mr. R. H. Maxwell of the Delta Petroleum Company about Diaz hauling his products? A. Yes, sir.

Q. And will you tell us about that, Mr. Winters?

MR. CASSIBRY: Objection. Irrelevant and immaterial. I don't see how any conversation Mr. Winters would have had with Mr. Maxwell would have made any difference at all. Certainly Mr. Maxwell has not played any part in this. If Mr. Maxwell had told Mr. Winters anything, I don't believe it would have any bearing on this case, because Mr. Maxwell in turn apparently [253] didn't relate it to anybody.

TRIAL EXAMINER: Would you like to discuss that, Mr. Paschal?

MR. PASCHAL: I think, Mr. Examiner, it may show motive for not placing the picket line at the Delta Petroleum Products Place and why the dock was selected. This witness has testified as to reasons why he selected the dock for picketing for reasons that he referred to as being certain reasons that I don't think were the reasons, and I intent to develop that line.

TRIAL EXAMINER: Well, I don't know how that will relate, or the evidence you are seeking now will relate to that

question. However, I will permit you to question the witness with regard to that. I will entertain a motion to strike if it should turn out that there is no relevance or if the evidence should remain in the record and I am satisfied there is no relevance, again as I have indicated before with regard to other matters I have permitted to go into the record, I will not rely on it in making my own findings and conclusions, so I do not think that anybody will be prejudiced thereby. I will overrule the objection with those considerations in mind.

THE WITNESS: May I have the question again.

Q. (By Mr. Paschal) Will you tell us about the conversation you had with Mr. Maxwell, please, sir. A. As close as I can relate it, I think Mr. Maxwell called me. He had great concern about the delivery of his products [254] to the Port of Embarkation, and when the restraining order by the local court was removed, he asked me if it were at all possible that he could unload the petroleum that he had en route or loaded on the trucks; that if I would cooperate with him to that degree, he said he was going to instruct his people in charge to seek other types of transportation until this had been resolved. He also told me that if we were further restrained that he would go back to using Diaz.

Q. And what did you say? A. I said that I was in agreement with that, with his proposal.

Q. Did you agree not to put up a picket line until, with respect to those trucks that were being unloaded? A. Yes, I agreed that I would not picket until he got the trucks unloaded.

Q. That you would not picket at the wharf? A. Right.

Q. Mr. Winters—

MR. CASSIDY: Mr. Examiner, if that is all he is going to ask him, the conversation, I will now move to strike.

TRIAL EXAMINER: I will deny the motion.

Q. (By Mr. Paschal) Mr. Winters, who conducted your

organizing campaign among the employees of the Diaz Drayage Company? A. Several organizers worked down there. It was under the direction of James Schwehm. Nash Wise worked on it and—

Q. Did you, Mr. Winters, do any of the organizing yourself? [255] A. Yes, I made the meetings and talked to the group.

Q. Did you ever go out to the Law Street address and try to sign anybody up in the Union? A. No.

Q. So any information that you have concerning the difficulties of contacting anybody at the Law Street address was reports that you got, is that it? A. I want to make a correction. I have on occasion been involved in the signing up of employees.

Q. Did you ever make any attempt to sign anybody up at the Law Street address and was not able to contact them? A. No.

Q. Did you authorize Jimmie Schwehm to go into the Diaz Drayage Company and demand recognition and a contract? A. Yes.

Q. At the time you sent him in there, did your Union claim to represent a majority of their employees? A. Yes, we did.

Q. Did they represent a majority of the employees? A. In my opinion, yes.

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IN THE

Supreme Court of the United States

October Term, 1957

No. 827

GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL 270 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO,

AND

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO,

AND

MURRAY W. MILLER, TRUSTEE FOR LOCAL NO. 270 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO,

PETITIONERS,

v.

NATIONAL LABOR RELATIONS BOARD,

RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL 270 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO, et al.,

PETITIONERS,

v.

NATIONAL LABOR RELATIONS BOARD,

RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia affirming a decree of the National Labor Relations Board directing petitioners to cease and desist from certain picketing which was alleged to be in violation of Section 8(b)(4)(A) and (B) of the National Labor Relations Act, as amended.

OPINION BELOW

The Opinion of the Court of Appeals is not yet reported and is attached hereto as Appendix "A". See also R. 54.

JURISDICTION

The judgment of the Court of Appeals was entered on January 23, 1958 (R. 56).

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254.

QUESTION PRESENTED

Whether otherwise legitimate picketing carried on against a primary employer at a primary place of employment, where other neutral employers are also engaged in work, can be proscribed by the Board under Section 8(b)(4)(A) or (B) of the Act through the device of utilizing easily drawn inferences as proof of an unlawful object of involving neutrals in the primary dispute, such inferences being based on circumstances present in almost every common situs picketing situation; or whether, in view of the protections afforded primary picketing under Sections 7 and 13 of the Act and under the Federal Constitution, the Board can conclude such unlawful object only on the basis of substantial proof of an actual purpose of involving such neutrals?

The circumstances from which the Board has here inferred an unlawful object of involving neutrals are (1) the availability of another place of business of the primary employer where the employees of the primary employer spend only 19 to 25 minutes of their working day, but where the Board concludes picketing could be "adequately" or "effectively" carried on without picketing at the common situs where such employees spend the major portion of their working day; (2) the presence at the common situs place of picketing of employees of neutrals who are members of another union known to be reluctant to cross picket lines; (3) the failure of the picketing union to take affirmative steps actively to discourage employees of neutrals from respecting the picket line; (4) the existence of an arrangement between a customer of the primary employer

and the picketing union, entered into after all picketing had ceased and at the request of that customer, that if the union resumed picketing, the customer would be given an opportunity to unload its products from the primary employer's trucks and to obtain the services of another carrier.

STATUTES INVOLVED

The pertinent provisions of the Labor-Management Relations Act (61 Stat. 136, 29 U.S.C. Sec. 151, *et seq.*) are Sections 7, 8(b)(4)(A) and (B) and 13:

> "Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3)."

> "Sec. 8 . . . (b). It shall be an unfair labor practice for a labor organization or its agents— . . .
> "(4) to engage in or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; "(B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been cer-

tified as the representative of such employees under the provisions of section 9; . . ."

"Sec. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right."

STATEMENT

A. *The Facts*

There is no conflict as to the facts, all of which are found in the Trial Examiner's Report (R. 23) as adopted by the Board (R. 18).

Petitioners are a New Orleans local union of truck drivers (hereinafter referred to as the "Union", its parent organization, and one of its officials. In July of 1956 that Union, having obtained signed membership application cards from a majority of the employees at the Diaz Drayage Co., a trucking firm doing business in the New Orleans area, requested that company to recognize and bargain collectively with it. Upon the company's refusal, a strike was declared on August 1, 1956, which strike was accompanied by picketing of the company. The picketing was carried on both at the Diaz garage where employees spent from 19 to 25 minutes per day in picking up and returning the trucks which they drove in hauling various petroleum products for customers of Diaz to the New Orleans Port of Embarkation, and also at that Port where the Diaz trucks were picketed whenever they appeared. The Diaz truck drivers spent the major portion of their working day at the Port of Embarkation, where because of crowded conditions they were often obliged to wait in line for long periods each time they appeared to make a delivery. The Union, after making a thorough study of where the Diaz employees could best be reached in event of a strike, had concluded that the Port of Embarkation was most ap-

propriate for that purpose, and the Trial Examiner found that there was "greater convenience and practicality to the Teamsters in picketing at this [the Port] situs." (R. 36.)

It was while the Diaz trucks were waiting to be unloaded at the Port that they were picketed by the union, and such picketing was carried on only when a Diaz truck appeared for unloading. The pickets were stationed as close to the Diaz trucks as possible, and the picket signs carried by the pickets bore the following legend (R. 26):

"ORGANIZATIONAL PICKET — DIAZ DRAYAGE CO.—NON-UNION — DIAZ EMPLOYEES — JOIN OUR UNION FOR BETTER WAGES AND WORKING CONDITIONS. GENERAL TRUCK DRIVERS LOCAL 270, AFL-CIO."

The pickets were instructed to speak to no one and, if questioned by anyone, merely to hand out a leaflet containing the following language (R. 27): "THIS PICKET IS DIRECTED AT THE EMPLOYEES OF DIAZ DRAYAGE CO. WE ARE ATTEMPTING TO ORGANIZE THE EMPLOYEES OF DIAZ DRAYAGE CO. THIS IS ALL I CAN TELL YOU ACCORDING TO LAW." The Board and the Trial Examiner found that these instructions were carried out by the pickets. There is no evidence, charge or suggestion that the union conspired with any other union, union members or employees employed at any of the warehouses or docks or unloading platforms at the Port to obtain their support in the dispute with Diaz.

The picketing had the effect of halting unloading of the Diaz Company trucks only; the picketing had no effect on the loading or unloading of other trucks or vehicles at the Port, which other trucks and vehicles continued to be unloaded by the dock employees at all times during the presence of the pickets. The dock employees in question were employed by the Ryan Stevedoring Company of New

Orleans and were members of the International Longshoremen's Association, an independent union. On seeing the picket signs, these employees voluntarily refrained from unloading the Diaz trucks even though made aware by their union representative of the possibility of disciplinary action against them. They did this with the acquiescence, indeed, under the direction of their supervisors who, whenever the pickets appeared, assigned them to work on other parts of the dock or on trucks other than Diaz trucks.

The picketing was carried on at the Port only for two days (August 1-2) and at the Diaz garage for only three days (August 1-3), at which times the picketing was enjoined by state court injunction. It was never thereafter resumed.

Some thirteen days after the picketing had first been instituted and some eleven days after it had ceased in its entirety, one of Diaz's principal customers—the Delta Petroleum Co.—approached the Union to make an arrangement under which the Union would agree not to resume picketing at the Port until the Diaz trucks carrying Delta products could be unloaded, in return for which Delta agreed to try to replace Diaz with another trucker. The Union consented to this arrangement.

B. *The Proceedings Before The Board and Court Below*

As the result of the picketing, Diaz filed charges of violation of Section 8(b)(4)(A) and (B) of the Act, which charges were heard before a Trial Examiner in New Orleans, who on November 6, 1956, issued his Intermediate Report finding the Union had so violated the Act by its picketing as aforementioned.

Following the filing of exceptions by the Union, the Board, on March 29, 1957, affirmed the rulings of the Trial Examiner and adopted his Findings, Conclusions and Recommendations in their entirety. Specifically, the Board

concluded that the picketing was carried on for the illegal object of inducing the dock employees of neutrals such as Ryan Stevedoring Company to cease unloading the Diaz trucks because (1) the Union had available to it the Diaz garage where picketing could be "effectively" carried on and where there was "adequate" opportunity to reach Diaz truck drivers so that picketing elsewhere must have been for an unlawful motive, (2) the Union could reasonably anticipate that picketing at the Port would have the effect of inducing Ryan's employees at the dock to quit work because such employees were members of a militant union that traditionally respected picket lines, (3) the Union made no affirmative effort other than the language of its picket signs and the statement on its handbills to disabuse Ryan's employees of the notion that the picketing was to encourage them to cease servicing Diaz trucks, and (4) the agreement between the Union and Delta Petroleum that the Union would not resume picketing until the Diaz trucks already loaded or enroute to the Port could be unloaded, in return for which the company stated it would try to get another trucker to replace Diaz, indicated that the union was desirous of inducing neutral employers to cease doing business with Diaz.

The Board ordered the Union to cease and desist all picketing at the Port, and the Union petitioned the court below to review the Board order. On January 23, that court (Chief Judge Edgerton and Circuit Judges Danaher and Bastian) directed enforcement of the Board's order. It did so solely because it deemed itself bound[1] by the majority decision of a different panel of judges of that court in *Truck Drivers Local Union 728, etc. v. National*

[1] In this respect it stated:

"It [the Union] contests only the Board's conclusion that the picketing violated the secondary boycott provisions of the Act. On this point we deem ourselves bound by this court's opinion in *Truck Drivers and Helpers Local Union 728, etc. v. National Labor Relations Board*, ... U. S. App. D. C. .... F. 2d ....., decided October 28, 1957. We therefore enforce the Board's order."

Labor Relations Board (United States Court of Appeals Case No. 13651, sometimes referred to as the Second *Campbell Coal* case, decided October 28, 1957, and as yet unreported, but which is before this Court on petition for writ of certiorari in Case No. 736, October Term 1957). The Local 728 case involved a similar attempt by the Board to infer the existence of an unlawful object in a common situs picketing situation on the basis of circumstances analogous to those present in this case, and the court there upheld the Board's order solely for the reason that

> "The Board's interpretation of the Act and the Board's application of it in doubtful situations are entitled to weight . . . We recognize the doubt, but we must give weight to the resolution of it by the Board."

The decision of the court below in the present case indicated neither lack of sympathy with the Union's position in the case nor sympathy with the decision of the Board in the Local 728 case; as indicated above, the court upheld the Board solely because it felt itself bound by the earlier opinion in the Local 728 case.

REASONS FOR GRANTING THE WRIT

This case is a companion case to the Local Union 728 case, *supra*, presently on petition for writ of certiorari before this Court in No. 736. In both cases the Board has attempted flatly to proscribe otherwise legitimate picketing of a primary employer carried on in connection with an ordinary labor dispute, where such picketing occurs at a place where other neutral employers are engaged in work and where the primary employer could be picketed at another place of business. In both cases it has attempted to proscribe such picketing by use of the same device, namely, the making of unwarranted inferences of an unlawful object to involve the neutrals in the dispute, based on circumstances present in almost every common situs picketing situation, and by creating various duties on the part of un-

ions attempting such picketing—duties not set forth or contemplated under any portion of the Act, but the failure to perform which duties are held to constitute evidence of an unlawful object. By use of this device, the Board, for all practical and legal purposes, has destroyed what unions have always regarded as one of their fundamental rights, namely, the right to picket an employer with whom they have a labor dispute at those places of operation where that employer can be reached most effectively, or, for that matter, at any place where that employer is carrying on his normal business.

Since the issues and the principles of law involved in both this and the Local 728 case are the same, it is respectfully requested that this Court consider the present petition together with the petition in Case No. 736, and, to avoid duplication of argument, we respectfully refer this Court to the Reasons for Granting the Writ appearing in the Petition in Case No. 736 (p. 7). The circumstances of the present case, even more so than the circumstances involved in the Local 728 case, illustrate the extremes to which the Board has gone in denying the right to picket in the common situs situation, and demonstrate the importance of the underlying question in both cases of whether the Board is warranted in applying Section 8(b)(4)(A) and (B) so as to limit and circumscribe, without reference to any criteria spelled out in the Act, one of labor's most basic prerogatives. As indicated by the Petition in No. 736, in proceeding as it does in such situation, the Board has completely disregarded the special protection accorded the right to picket under Sections 7 and 13 of the Act. Further, the Board has ignored repeated declarations of Congressional sponsors of the Act that they did not intend in any way to interfere with ordinary picketing and the ordinary strike, and has attached no significance to the failure of Congress either to make or even talk about special restrictions on the right to picket in the

common situs situation, such as restrictions based on the "effectiveness" of the picketing, "adequacy" of ability to communicate, or the availability of another situs of picketing. By so doing, the Board has proceeded to make its own law concerning the right to picket at a common situs of employment, and has decreed, without warrant in any language of the Act, that there shall be no picketing at a common situs of employment where another single situs is available.

The Board attempted to achieve this result in the first instance by an arbitrary pronouncement that it would always infer an illegal object of involving neutrals in common situs picketing where another site was available. *Campbell Coal Co.*, 112 NLRB No. 119. The court below in *Sales Drivers, Helpers & Building Construction Drivers Local Union 859, etc. v. N.L.R.B.*, 97 U.S. App. D.C. 173, 229 F. 2d 514, cert. den 351 U.S. 972, and by the Fifth Circuit in *N.L.R.B. v. General Drivers Local 968, AFL*, 225 F. 2d 205, put a halt to this too easy method of concluding an illegal object and reminded the Board that the protections of Section 13 required more definite proof of an actual object to accomplish what is proscribed in Section 8(b)(4)(A) and (B). The Board then resorted to the device complained of here and in No. 736 of making inferences from other circumstances normally involved in common situs picketing even though, as in the cases of the first *Campbell Coal* case it had previously considered such circumstances of no importance. In addition, it resorted to the further device of creating affirmative obligations, such as the duty of affirmatively disabusing any neutral employees of any thought that the picketing was directed against their employer, even though such duties are nowhere prescribed in the Act. In *Campbell*, the duty of thus contacting the neutral's employees apparently arose only when the union had exercised its otherwise proper right of requesting the neutral employer himself to assist it in its labor dispute by voluntarily ceas-

ing to deal with the struck employer, and the neutral had refused such request, but in the present case this duty appears to exist even where there has been no attempt to seek a neutral's assistance.

The present case constitutes even stronger proof of the arbitrary nature of the Board's conclusion that the picketing at the Port of Embarkation must necessarily have been for an illegal object, because here the picketing, admittedly carried on in connection with the primary dispute, was carried on at the most natural, logical and practical place for such picketing, namely, the place where employees of the struck employer spent the major portion of their working day. Yet, because the picketing could have been and was also carried on at another place of employment where there were no neutrals present engaged in work, the Board would restrict the picketing to that place even though the employees of the primary employer were engaged in work there only from 19 to 25 minutes per day.

To bolster such a holding, the Board relies on inferences even more specious than those involved in Case No. 736. For instance, the Board infers the picketing at the Port to be for an unlawful object because the union could reasonably have anticipated that such picketing would involve Ryan's employees, those employees being members of another union that had respected picket lines on other occasions. Needless to say, if this is a factor which can operate to permit the Board to invalidate otherwise proper picketing, then there would be few if any instances in which a union could legally engage in picketing at any place which other union members are known to approach or where other union members are employed.

Next, the Board infers an unlawful object because the union had failed to take affirmative steps to disabuse Ryan's employees of the notion that the picketing was to encourage their support. Although the Board found that the pickets'

signs were properly directed and that the pickets refrained from taking any direct action to induce Ryan's employees or the employees of any other neutrals to support their strikes either by way of oral communication or otherwise, apparently the Board would require the union to take the further step of directly urging Ryan's employees to cross the picket line. Aside from the fact that any such requirement would be contrary to the entire tradition of picketing as conceived, carried on, and regarded in the American labor movement, it should once again be noted that there is nothing in the Act or its legislative history which indicates any Congressional intent that a requirement as drastic as that now proposed by the Board should exist either in the common situs picketing situation or in any other picketing situation. Furthermore, the actual evidence in the case makes clear that any involvement of Ryan's employees was either a completely voluntary act on their part or else was prompted by the actions of their own supervisors. In any event, it appears that the Board has gone far afield in creating a new duty on the part of pickets affirmatively to discourage recognition of the picket signs by fellow union members, and then utilizing the failure of the pickets to perform this new duty as proof of an unlawful object. As stated by Judge Bazelon, dissenting in the Local 728 case, *supra:*

> "The employees of the neutral employer are free to support the Union out of feelings of solidarity. The law does not forbid the Union to receive such support. The Board's requirement of affirmative action is calculated to deprive the Union of that support. This, of course, seriously impairs the Act's basic policy not "to interfere with or impede in any way the right to strike." 49 Stat. 457 (1935), 29 U.S.C. § 163 (1952).

Finally, the Board infers proof of an object to involve Ryan and other neutrals because of an alleged arrangement between the Union and Delta Petroleum under which the Union agreed not to resume picketing at the Port until the

Delta trucks already loaded or en route to the Port could be unloaded, in return for which Delta would replace Diaz with another trucker. How this arrangement could constitute any proof of an unlawful object is difficult to see. To begin with, the arrangement was entered into some 13 days *after* the picketing had first been instituted and some 11 days *after* it had ceased in its entirety. Secondly, Delta Petroleum approached the Union to make the arrangement, and not the Union the company; how can any inference *against the Union* be drawn from this? Finally, even had the Union first approached Delta, it would have done so only in the exercise of a right which both the Board and the courts have consistently held are available to unions engaged in labor dispute, namely, the right directly to solicit a neutral employer for his voluntary cooperation and assistance. Once again the Board has drawn an invidious inference, here applied retroactively, from the exercise of a legitimate right.

It is one thing to rely on such concrete factors as indicative of an unlawful intent as picket signs which are directed against employers other than the primary employer, the fact of actual incitement or direct request of neutral employees not to handle the products of the struck employer, or connivance with other unions for their members to lend support. *(Cf. N.L.R.B. v. Denver Building and Construction Trades Council*, 341 U.S. 675; *International Brotherhood of Electrical Workers, Local 501, AFL, v. N.L.R.B.*, 341 U.S. 694; *Local 74, United Brotherhood of Carpenters, etc. v. N.L.R.B.*, 341 U.S. 707.) It is quite another to infer an unlawful intent from circumstances such as were relied on in this case and in No. 736.

If, instead of relying on the inference or speculation, we look to the record in this case, certainly the evidence taken as a whole indicates that the real purpose of the picketing at the Port—that which "satisfied the picket's aim"—was the quite natural and obvious one of reaching Diaz employ-

ees at the place where they spent the larger portion of their working day and to contact such employees for organizational purposes, where it would be most practical and effective so to do. Certainly, if inferences are to be indulged in in this case, the Board could as readily and with greatly more logic have inferred a proper object in the picketing; "when the Board could as reasonably infer a proper motive as an unlawful one, substantial evidence has not proved the respondent to be guilty of an unfair labor practice." *N.L.R.B. v. Houston Chronicle Publishing Co.*, 211 F. 2d 848. This, it is submitted, is particularly true when there are involved rights finding specific and paramount protection under Section 13 of the Act and under the Federal Constitution.

CONCLUSION

It is respectfully submitted that, for the reasons asserted above, the Petition for a Writ of Certiorari should be granted in this case and in No. 736, this term.

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APPENDIX A

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13968

GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL 270 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO, *et al.*, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petition to Review and on Petition for Enforcement of an Order of the National Labor Relations Board

---

Decided January 23, 1958

Mr. Herbert S. Thatcher for petitioners.

Mr. Arnold Ordman, Attorney, National Labor Relation Board, of the bar of the Supreme Court of Massachusetts, *pro hac vice*, by special leave of Court, with whom *Messrs. Stephen Leonard*, Associate General Counsel, National Labor Relations Board, and *Marcel Mallet-Prevost*, Assistant General Counsel, National Labor Relations Board, were on the brief, for respondent. *Mr. Owsley Vose*, Attorney, National Labor Relations Board, also entered an appearance for respondent.

Before EDGERTON, *Chief Judge,* and DANAHER and BASTIAN, *Circuit Judges.*

PER CURIAM: The union asks us to set aside an order of the National Labor Relations Board requiring it to cease and desist from certain picketing found to violate §8(b)(4)(A) and (B) of the National Labor Relations Act, as amended, 61 Stat. 141, 29 U.S.C. §158(b)(4)(A) and (B), and to post the customary notices. The Board asks us to enforce its order.

The union does not dispute the factual findings which underly the Board's order. It contests only the Board's conclusion that the picketing violated the secondary boycott provisions of the Act. On this point we deem ourselves bound by this court's opinion in *Truck Drivers and Helpers Local Union 728, etc.* v. *National Labor Relations Board,* — U.S.App.D.C. —, — F. 2d —, decided October 28, 1957. We therefore enforce the Board's order.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL 270 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO, ET AL., PETITIONERS,

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Filed: February 25, 1958.

(S) JOSEPH W. STEWART,
Clerk.

DECREE ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

No. 13,968

Before: Edgerton, Chief Judge, and Danaher and Bastian, Circuit Judges.

This cause came on to be heard upon the petition of General Truck Drivers, Chauffeurs, Warehousemen & Helpers, Local 270 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of A., AFL-CIO; and International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of A., AFL-CIO; and Murray W. Miller, Trustee for Local No. 270 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of A., AFL-CIO, to review and set aside the Order of the National Labor Relations Board, dated March 29, 1957, and upon the cross-petition of the Board to enforce said Order. The Court heard argument of respective coun-

sel on December 3, 1957, and has considered the briefs and the transcript of record filed herein. On January 23, 1958, the Court, being fully advised in the premises, handed down its decision granting the Board's petition for enforcement of said Order of March 29, 1957. In conformity therewith, it is hereby

ORDERED, ADJUDGED AND DECREED that the Petitioners, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, and General Truck Drivers, Chauffeurs, Warehousemen and Helpers, Local 270 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, and Murray W. Miller, Trustee of Local 270 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, their officers, agents, successors and assigns shall:

1. Cease and desist from inducing or encouraging employees of Ryan Stevedoring Company, or the employees of any employer other than Robert L. Diaz, Jr. and Warren G. Diaz, Sr., doing business as Diaz Drayage Company, to engage in a strike or concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is (a) to force Ryan Stevedoring Company or any other employer or person to cease doing business with Robert L. Diaz, Jr., and Warren G. Diaz, Sr., doing business as Diaz Drayage Company, or (b) to force or require Robert L. Diaz, Jr. and Warren G. Diaz, Sr., doing business as Diaz Drayage Company, to recognize or bargain with Teamsters Local 270, as collective bargaining representative of its employees, unless and until certified as such representative in accordance with the provisions of Section 9 of the National Labor Relations Act, as amended.

2. Take the following affirmative action, which the National Labor Relations Board has found will effectuate the

policies of the National Labor Relations Act, as amended;

(a) Post at the business office of Teamsters Local 270 in New Orleans, Louisiana, copies of the notice attached hereto and marked Appendix. Copies of said notice, to be furnished by the Regional Director for the Fifteenth Region of the National Labor Relations Board (New Orleans, Louisiana) shall, after being duly signed by Petitioners' representatives, be posted by them immediately upon receipt thereof and be maintained by them for sixty (60) consecutive days thereafter in conspicuous places including all places where notices to their members are customarily posted. Reasonable steps shall be taken by the Petitioners to insure that said notices are not altered, defaced, or covered by any other material. The Petitioners shall also sign copies of the said notice which the aforesaid Regional Director shall submit for posting, the Employers willing, at the premises of Diaz Drayage Company and Ryan Stevedoring Company.

(b) Notify the aforesaid Regional Director in writing within ten (10) days from the date of this Decree what steps Petitioners have taken to comply herewith.

PER CURIAM

Dated: February 25, 1958.

APPENDIX

To All Members of General Truck Drivers, Chauffeurs, Warehousemen & Helpers, Local 270, of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO

PURSUANT TO A DECREE

of the United States Court of Appeals enforcing an order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act we hereby notify you that:

WE WILL NOT engage in, or induce or encourage the employees of RYAN STEVEDORING COMPANY or of any employer other than Robert L. Diaz, Jr., and Warren G. Diaz, Sr., partners doing business as DIAZ DRAYAGE COMPANY, to engage in a strike or concerted refusal in the course of their employment, to use, manufacture, process, transport, or otherwise handle or work on goods, articles, or commodities, or to perform any services for their respective employers where an object thereof is to force or require any employer or person to cease doing business with Robert L. Diaz, Jr., and Warren G. Diaz, Sr., partners doing business as DIAZ DRAYAGE COMPANY, or to force or require Robert L. Diaz, Jr., and Warren G. Diaz, Sr., partners doing business as DIAZ DRAYAGE COMPANY to recognize or bargain with the undersigned labor organizations, or either of them as the representative or representatives of its employees.

unless and until certified as such representatives in accordance with the provisions of Section 9 of the National Labor Relations Act.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO

(Labor Organization)

Dated _____ by _____
(Representative) (Title)

GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL 270 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO

(Labor Organization)

Dated _____ by _____
(Representative) (Title)

Dated _____ by _____

MURRAY W. MILLER, TRUSTEE FOR LOCAL 270 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL-CIO

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

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FILED
MAR 23 1958
JOHN T. FEY, Clerk

No. 827

In the Supreme Court of the United States

OCTOBER TERM, 1957

GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL 270 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL–CIO, ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

J. LEE RANKIN,
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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 827

GENERAL TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS, LOCAL 270 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL–CIO, ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (Pet. 15–16) is not yet reported. The Board's findings of fact, conclusions of law, and order (R. 17–21) are reported at 117 NLRB 885.

JURISDICTION

The judgment of the court below (R. 56) was entered on January 23, 1958. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether substantial evidence supports the Board's finding that, in the circumstances of this case, the Union, by picketing at a place where both employees of the employer involved in a dispute with the Union and employees of a secondary employer not involved in the dispute were present, induced and encouraged the employees of the latter to engage in work stoppages in violation of Section 8 (b) (4) (A) and (B) of the National Labor Relations Act.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*), are set forth at pp. 3–4 of the Petition.

STATEMENT

A. *The Board's findings of fact.* The Board found that petitioners, by picketing at the New Orleans Port of Embarkation while trucks of Diaz Drayage Company were there, sought to induce and encourage the employees of Ryan Stevedoring Company not to handle oil delivered in Diaz' trucks, in order to disrupt Diaz' business relations with its customers and so force Diaz to deal with the Union which was not certified as the collective bargaining representative of its employees. The Board based its conclusion upon the following undisputed facts:

In July 1956, the Union's secretary-treasurer, James Peter Schwehm, requested the Diaz partners, Robert L. Diaz, Jr., and Warren G. Diaz, Sr., to recognize the Union as the bargaining agent for their

truck drivers and helpers, and presented a contract (R. 25–26). The Diaz brothers refused Schwehm's request (R. 26).

On August 1, 1956, Diaz having persisted in its refusal to deal with the Union, Schwehm stationed a picket at the Diaz office and garage, and also stationed a picket at the entrance to the New Orleans Port of Embarkation, an Army facility for the receipt and shipment of military materials (*ibid.*). The pickets were instructed to speak to no one but, if questioned, to hand out a leaflet, reading (*ibid.*):

> THIS PICKET IS DIRECTED AT THE EMPLOYEES OF DIAZ DRAYAGE CO. WE ARE ATTEMPTING TO ORGANIZE THE EMPLOYEES OF DIAZ DRAYAGE CO. THIS IS ALL I CAN TELL YOU ACCORDING TO LAW.

The pickets carried signs, stating (*ibid.*):

> ORGANIZATIONAL
> PICKET
> DIAZ DRAYAGE CO.
> NON-UNION
> DIAZ EMPLOYEES
> JOIN OUR UNION
> FOR BETTER WAGES AND
> WORKING CONDITIONS
> GEN. TRUCK DRIVERS LOCAL 270
> A. F. L. C. I. O.

The picketing at the Diaz office and garage continued until August 3, on which date the Union was restrained from further picketing by a State court injunction (R. 28).[1] The picketing, before it was

[1] This injunction was dissolved on August 13 (R. 28).

restrained, reached all Diaz truck drivers and helpers, who spent from 5 to 7 minutes at the premises to pick up their keys in the morning and to depart with their trucks, and about 15 minutes to return their trucks in the afternoon and to get them ready for the next morning's departure (R. 31).

The picketing at the Port of Embarkation prevented the unloading of all Diaz trucks. About 90 percent of the Diaz business is hauling oil from the premises of oil suppliers to the port (R. 31). Diaz trucks are checked and unloaded by employees of the Ryan Stevedoring Company, who are represented by Local 1655, International Longshoremen's Association, Independent (R. 26, 28–29). The Union's president, Charles D. Winters, acknowledged that Local 1655 had previously respected the Union's picket lines at the Port of New Orleans (R. 34).[2] Consistent with this practice, Ryan's employees refused to check and unload Diaz trucks on August 1 and 2 because of the picket stationed by the Union while the Diaz trucks were present at the port (R. 28–30). These employees were assigned to other work by Lawrence King, Ryan's clerk in charge of dock unloading operations and a member of Local 1655 (*ibid.*). Earl Dennies, Local 1655's president, was summoned to the dock by King, upon the initial refusal of Ryan's employees to unload Diaz trucks, but did not interfere with the employees' decision not

[2] James Schwehm, another Union official, testified that respect for picket lines was a general policy and was expected of all local unions in New Orleans (R. 34).

to work on those trucks (*ibid.*). The Union for its part made no effort to disabuse Ryan's employees of the notion that the picketing was to encourage them to cease servicing Diaz trucks (R. 18, 39).

As related, the Union's picketing was restrained by a State court injunction issued on August 3 and dissolved on August 13. On the latter date, the Union's president, Charles D. Winters, received a call from R. H. Maxwell, an official of the Delta Petroleum Company, Diaz' principal customer (R. 33). Maxwell urged Winters not to resume picketing at the port until Delta oil had been unloaded from Diaz' trucks at or en route to the docks (*ibid.*). If Winters agreed, Maxwell promised to urge Delta to use other truckers so long as the Union continued to picket Diaz (*ibid.*). Winters consented to Maxwell's request (*ibid.*).

The Union did not thereafter resume its picketing at the Port of Embarkation. On August 17, the United States District Court for the Eastern District of Louisiana, on petition of the General Counsel of the National Labor Relations Board pursuant to Section 10 (1) of the Act, entered a temporary restraining order enjoining such picketing. Pursuant to the statutory scheme, this order was dissolved following issuance of the Board's Decision and Order (No. 6048, D. C. E. D. La.) (R. 28).

B. *The Board's decision and order.* The Board, after considering the entire record in the case, concluded that the Union's picketing at the New Orleans Port of Embarkation was aimed at the employees of

Ryan Stevedoring Company, in violation of Section 8 (b) (4) (A) and (B) of the Act. In so finding, the Board adopted the Trial Examiner's findings and conclusions and noted the circumstances supporting his analysis of the record (R. 18–19):

> In agreeing with the Trial Examiner, we adopt his analysis of the record as establishing that an object of the Teamsters' Picketing at the Port of Embarkation was to induce employees of Ryan Stevedoring Company to cease handling the oil delivered in Diaz' trucks in order to disrupt Diaz' business relations with its customers and thereby compel Diaz to accede to the Teamsters' demands for recognition and a contract. Thus, we note that adequate communication with all Diaz truckers was possible at the Diaz garage and office; that Local 270 could reasonably anticipate, based on past observance of its picket lines at the Port by ILA Local 1655, that Local 1655 members employed by Ryan would cease working upon the appearance of a picket regardless of the legend on the picket sign; that Local 270 made no effort to disabuse Ryan's employees of the notion that the picketing was to encourage them to cease servicing Diaz' trucks, and finally, the agreement between Winters, Local 270 president, and Maxwell of Delta Petroleum, that the latter would try to get his company to replace Diaz with another trucker in return for Winter's promise not to resume picketing at the Port after dissolution of the State injunction on August 13, 1956 until the trucks already loaded or enroute to the Port could be unloaded.

The Board's order requires petitioners to cease and desist from the unfair labor practices, and to post appropriate notices (R. 19–21).

C. *The decision of the court below.* The court below held that the Board's undisputed factual findings supported the Board's conclusion that the Union's picketing at the New Orleans Port of Embarkation "violated the secondary boycott provisions of the Act" (Pet. 16). In so doing, the court deemed itself bound by its earlier opinion in *Truck Drivers & Helpers* v. *National Labor Relations Board,* 249 F. 2d 512, certiorari denied, No. 736, this Term. Accordingly, the court enforced the Board's order (Pet. 16).

ARGUMENT

As petitioners state (Pet. 9), the question presented here is the same as in *Truck Drivers & Helpers* v. *National Labor Relations Board,* 249 F. 2d 512 (C. A. D. C.) in which this Court denied certiorari on March 3, 1958, No. 736, this Term. Here, as in No. 736, the question is whether the record adequately supports the Board's finding that the immediate target of the union's picketing at a site where both the primary employer and secondary employers were present and doing business with each other was the latter and hence in violation of Section 8 (b) (4) (A) and (B).[3] As stated in the brief in opposition in No. 736, to which we respectfully refer the Court, this issue is essentially one of fact to be

[3] While No. 736 involved a violation of only Section 8 (b) (4) (A), the underlying issue is the same with respect to both Sections 8 (b) (4) (A) and (B).

determined from all the surrounding circumstances. As in No. 736, the resolution of this issue adversely to petitioners presents no question warranting further review by the Court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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MARCH 1958.

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